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10/544,245

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Vincent Douglas

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KING & SCHICKLI, PLLC  
247 NORTH BROADWAY  
LEXINGTON, KY 40507

EXAMINER

MAY, ROBERT J

ART UNIT

PAPER NUMBER

2885

MAIL DATE

DELIVERY MODE

11/21/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/544,245 | <b>Applicant(s)</b><br>DOUGLAS, VINCENT |  |
|                              | <b>Examiner</b><br>ROBERT MAY        | <b>Art Unit</b><br>2885                 |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-11,13,18,19,23,25,26,28-31,34,36,37 and 39-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-11,13,18,19,23,25,26,28-31,34,36,37 and 39-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

The amendment filed 8/21/2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 7-8, 10-11, 18-19, 25, 28, 30-31, 34, 36-37, 47-48 and 55-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (5,931,764) in view of Nishimura (4,083,177) and De LA Huerga (6,255,951).

Regarding Claims 1 and 37 Freeman discloses in Figure 1, a display apparatus comprising a flexible display member 12 (Col 2, lines 21-22), comprising a flexible electronic pixel array (LCD using a filter having an array of pixels 86 Figured 10, Col 5, lines 65+), and a control unit 14,18,39 (power source 14, integrated circuit Col 3, lines 59-60, and buttons 18) capable for controlling the electronic pixel array provided at one end of the display member 12, and the display member 12 is in the form of a strip of a size suitable to be positioned around a limb of a user (watches or other wearable devices Col 1, lines 4-5).

Regarding Claims 7, Freeman fails to disclose the display member removably attached to the control unit wherein the display member can be detached from the

control unit and replaced with an alternative design or size display member to suit the user.

Nishimura discloses in Figures 2-3, a display apparatus having a display member (liquid crystal cell 9), which can be detached to a control unit 3 for repairing the watch or replacing the liquid crystal cell instead of replacing the more expensive circuitry or controller components (Col 3, lines 50-69 and Col 4, lines 1-12 and Col 12, lines 40-47).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display apparatus of Freeman with an easily removable display as taught by Nishimura so that the display can be replaced without disposing of the more expensive circuitry or controlling components.

Regarding Claims 1 and 37, Freeman in view of Nishimura fails to disclose the display member removably attached to the controller without using screws.

De La Hueraga discloses in Figure 11, a method of attaching method of attaching without using screws for a display to a wrist band 400 (tongue and groove configuration 436, 408).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate a method of removably attaching the display to the controller without using screws. All the claimed elements in De LA Hueraga, Freeman and Nishimura were known in the prior art and one skilled in the art could have combined the tongue and groove features with display as claimed with no change in their respective functions, and the combination would have yielded the predictable result to one of ordinary skill in the art at the time of the invention of removably attaching the

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display to the wrist band. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (2007).

Regarding Claims 5 and 25 Freeman discloses light emitting polymers on the display (display can comprise light emitting polymer displays Col 3, lines 55-57), but fails to disclose the display member as being bonded to a strip.

It would have been obvious to one of ordinary skill in the art to bond the light emitting polymer to the strip using an adhesive because the known technique of adhesive bonding was recognized as part of the ordinary capabilities of one skilled in the art. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (2007).

Regarding Claims 8 and 28, Freeman discloses in Figure 1, controls (buttons 18) are provided on the control unit 14, 18 and 39.

Regarding Claims 10, 18 and 30 Freeman discloses in Figure 6, the use of a timing circuit and the display member 12 is adapted to display time indicia to function as a watch (Col 5, lines 15-20).

Regarding Claims 11, 19 and 31, Freeman discloses in Figures 6 and 10, a means for generating visual patterns on the display member 12 (numerical patterns and color patterns, Col 5, lines 65+, and graphical images Col 4, lines 12-15) and functions as an electronic bracelet (fits around a person's wrist, Col 2, lines 21-31).

Regarding Claims 34 and 36, Freeman discloses a display apparatus with a sound sensor (piezoelectric microphone Col 2, lines 39-47).

Regarding Claims 47 and 48, Freeman fails to disclose the display member comprising a battery separate from the control unit.

It would have been obvious to one of ordinary skill to separate the battery from the controller so as to configure the display apparatus to have the battery accessible and easily replaceable. Furthermore, regarding the controller of Freeman not having a battery separate from the controller, the applicant is advised that it has been held by the courts that the mere fact that a given structure is integral does not preclude its consisting of various elements, and that constructing a formerly integral structure in various portions involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 178.

Regarding Claims 55-56, Freeman discloses a radio frequency link capable of remotely controlling a device (communication element 16 to process RF communication such as cellular messaging with computers and smart card readers Col 2, lines 48-55).

Claims 3, 6, 13, 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (5,931,764), Nishimura (4,083,177) and De La Huerga (6,255,951) as applied to claims 1, 25 and 37 above, and further in view of Kuroda (4,060,185).

Regarding Claims 3 and 23, Freeman fails to disclose the display member sufficiently stiff so as to retain its shape without the need for a latch or other retainer.

Kuroda discloses I Figures 1 and 4, a strip which is suitable to be positioned around the limb of a user that is sufficiently stiff as to retain its shape without the need for a latch or other retainer so that the display member can be easily put on or removed as well as enhance the aesthetics of the wrist band member.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display member of Freeman with the sufficiently stiff material as taught by Kuroda so that the display member can be easily put on or removed as well as enhance the aesthetics of the wrist band member.

Regarding Claim 13, Freeman discloses light emitting polymers on the display (display can comprise light emitting polymer displays Col 3, lines 55-57), but fails to disclose the display member as being bonded to a strip.

It would have been obvious to one of ordinary skill in the art to bond the light emitting polymer to the strip using an adhesive because the known technique of adhesive bonding was recognized as part of the ordinary capabilities of one skilled in the art. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (2007).

Regarding Claim 6 and 26, Freeman discloses the display member as comprising a filter layer (Col 5, lines 65-67), and discloses in Figures 2A and 2B, a flexible wearable illuminating device comprising an anti-moisture covering 26, (Col 3, lines 1-10). Freeman fails to disclose the display member having a rubber backing, and a thin strip of metal forming the malleable strip.

Kuroda discloses in Figure 1, a rubber backing 6 (Col 3, line 67-68) to prevent the human body from being hurt from the ends of the metal plate (Col 4, lines 23-26) and a stainless steel material used as the malleable thing metal strip because it maintains its luster semi-permanently (Col 2, lines 10-15).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to back the metal plate of Freeman with the rubber

backing and stainless steel metal strip of Kuroda so that the human body is not hurt from the ends of the metal plate and the metal band maintains its luster semi-permanently.

Claims 9 and 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (5,931,764), Nishimura and De La Huerga as applied to Claims 8 and 28 above and further in view of Blotky (WO 00/59327).

Freeman fails to disclose the controls in the form of touch sensitive areas.

Blotky discloses a controller on a bracelet display comprising touch screens or buttons (pg 6, line12) so that the wearer can program the microprocessor (pg 5, lines 1-2) and so that the controller has a sleeker modern look and feel.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display member of Freeman with the touch sensitive areas of Blotky so the wearer can program the microprocessor and so that the controller has a sleeker modern look and feel.

Claims 39, 41, 49-50, 57-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (5,931,764) in view of Broderick (GB 2373990).

Regarding Claims 39 and 41, Freeman discloses in Figure 1, a display apparatus comprising a flexible display member 12 (Col 2, lines 21-22), comprising a flexible electronic pixel array (LCD using a filter having an array of pixels 86 Figure 10, Col 5, lines 65+), and a control unit 14, 18, 39 (power source 14, integrated circuit Col 3, lines



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59-60, and buttons 18) provided at one end of the display member 12, and the display member 12 is in the form of a strip of a size suitable to be positioned around a limb of a user (watches or other wearable devices Col 1, lines 4-5).

Freeman fails to disclose the malleable display member as a strip of thin metal or plastic which is initially axially straight and transversely concave.

Broderick discloses in Figure 4 an armband that is made from thin plastic (Pg 3, lines 1-2) so as prevent moisture penetration and is axially straight and transversely curved (pg 2 lines 4-6) so that the arm band has a self coiling nature causing the armband to grip the arm of the wearer (Pg 4, second paragraph) without using any clasps.

Therefore, it would have been obvious to one of ordinary skill at the time the invention was made to modify the display member of Freeman with thin strips that are transversely concave so that the armband prevents moisture penetration and has a self-coiling nature without the use of clasps.

Regarding Claims 49-50, Freeman fails to disclose the display member comprising a battery separate from the control unit.

It would have been obvious to one of ordinary skill to separate the battery from the controller so as to configure the display apparatus to have the battery accessible and easily replaceable. Furthermore, regarding the controller of Freeman not having a battery separate from the controller, the applicant is advised that it has been held by the courts that the mere fact that a given structure is integral does not preclude its consisting of various elements, and that constructing a formerly integral structure in

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various portions involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 178.

Regarding Claims 57-58, Freeman discloses a radio frequency link capable of remotely controlling a device (communication element 16 to process RF communication such as cellular messaging with computers and smart card readers Col 2, lines 48-55).

Regarding Claims 59-60, Freeman discloses a display apparatus with a sound sensor (piezoelectric microphone Col 2, lines 39-47).

Claims 40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (5,931,764) and Broderick (GB 2373990) as applied to claim 39 and 41 above, and further in view of Nishimura (4,083,177)

Freeman fails to disclose the display member removably attached to the control unit wherein the display member can be detached from the control unit and replaced with an alternative design or size display member to suit the user.

Nishimura discloses in Figures 2-3, a display apparatus having a display member (liquid crystal cell 9), which can be detached to a control unit 3 for repairing the watch or replacing the liquid crystal cell instead of replacing the more expensive circuitry or controller components (Col 3, lines 50-69 and Col 4, lines 1-12 and Col 12, lines 40-47).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display apparatus of Freeman with an easily removable display as taught by Nishimura so that the display can be replaced without disposing of the more expensive circuitry or controlling components.

Claims 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (5,931,764), Nishimura (4,083,177) and De La Huerga as applied to claims 1 and 37 above, and further in view of Samson (GB 2258134).

Freeman fails to disclose the pixel array provided on one side of the display member and a display provided on the opposite side of the display member. This is seen to be merely a double sided display member absent any further description or limitations in the claim.

Samson discloses in Figures 1A-1C a bracelet with display member 2B that is reversible wherein each side has a different design or color so a person would not be required to have a selection, to complement their attire, of different watches or straps which would be expensive (Pg 1, second paragraph). Furthermore the duplication of parts (i.e. the pixel array on both sides of the display member) has no patentable significance unless a new and unexpected result is produced *In re Harza*, 274 F.2d 669, 124 USPQ 378.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the pixel array or display on both sides of the display member as taught by Samson so a person would not have to have a selection of different watches or straps in order to complement their attire.

Claims 45-46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (5,931,764) and Broderick (GB 2373990) as applied to claims 39 and 41 above, and further in view of Samson (GB 2258134).

Freeman fails to disclose the pixel array provided on one side of the display member and a display provided on the opposite side of the display member. This is seen to be merely a double sided display member absent any further description or limitations in the claim.

Samson discloses in Figures 1A-1C a bracelet with display member 2B that is reversible wherein each side has a different design or color so a person would not be required to have a selection, to complement their attire, of different watches or straps which would be expensive (Pg 1, second paragraph). Furthermore the duplication of parts (i.e. the pixel array on both sides of the display member) has no patentable significance unless a new and unexpected result is produced *In re Harza*, 274 F.2d 669, 124 USPQ 378.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the pixel array or display on both sides of the display member as taught by Samson so a person would not have to have a selection of different watches or straps in order to complement their attire.

Claims 51-52 and 61-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (5,931,764), Nishimura (4,083,177) and De La Huerga

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(6,255,951) as applied to claims 1 and 37 above, and further in view of Michael (6,433,483).

Regarding Claims 51-52, Freeman fails to disclose a light sensor for controlling the illumination of the pixel array in accordance with ambient light.

Michael discloses a light sensor for controlling the illumination of an article worn on a wrist for varying the illuminating effect (Col 5, lines 1-10) and it would have been seen that have been known that this would be useful in conserving power by controlling the level of illumination in response to ambient light.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a light sensor as taught by Michael to vary the illuminating effect in response to ambient light and to conserve power.

Regarding Claims 61-62, Freeman fails to disclose a battery recharged by a solar cell or thermoelectric cell.

Michael discloses a battery of a piece of jewelry charged by a solar cell for purposes of recharging the batteries when a conventional main power supply is not available or incompatible with the device when the wearer is traveling (Col 20, lines 60-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the battery of Freeman with a battery charged by a solar cell as taught by Michael for purposes of recharging the batteries when a conventional main power supply is not available or incompatible with the device when the wearer is traveling.

Claims 53-54 and 63-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (5,931,764) and Broderick (GB 2373990) as applied to claims 39 and 41 above, and further in view of Michael (6,433,483).

Regarding Claims 53-54, Freeman fails to disclose a light sensor for controlling the illumination of the pixel array in accordance with ambient light.

Michael discloses a light sensor for controlling the illumination of an article worn on a wrist (i.e., a bracelet) for varying the illuminating effect (Col 5, lines 1-10) and it would have been seen that have been known that this would be useful in conserving power by controlling the level of illumination in response to ambient light.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a light sensor as taught by Michael to vary the illuminating effect in response to ambient light and to conserve power.

Regarding Claims 63-64, Freeman fails to disclose a battery recharged by a solar cell or thermoelectric cell.

Michael discloses a battery of a piece of jewelry charged by a solar cell for purposes of recharging the batteries when a conventional main power supply is not available or incompatible with the device when the wearer is traveling (Col 20, lines 60-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the battery of Freeman with a battery charged by a solar cell as taught by Michael for purposes of recharging the batteries when a

conventional main power supply is not available or incompatible with the device when the wearer is traveling.

### ***Response to Arguments***

Applicant's arguments filed August 21, 2008 have been fully considered but they are not persuasive.

The applicant submits that Freeman fails to characterize the display as being readily removably attached therefore a prima facie case of obviousness has not been established. The Examiner disagrees and although Freeman fails to disclose a readily removable display member Nishimura is used to show that it would have been obvious to one of ordinary skill that having a removable display to provide a cost benefit as asserted in the rejection

In response to applicant's argument based upon the age of the references (particularly Nishimura) contends that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

Although Nishimura only discloses screws for attaching the display, this does not defeat the asserted obviousness of not using screws exemplified by the De La Huerga patent.

The argument that Nishimura fails to disclose providing an array of display members that a user can pick and choose is without merit as this is an intended use

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recited in the claims which is not afforded patentable weight. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Nishimura is seen as capable having the display member replaced with an alternate display to suit the user.

The applicant argues that the asserted reasons for combining Broderick with Freeman does not constitute the necessary articulated reasoning to create a prima facie case of obviousness. The fact that Freeman might only disclose the use of Velcro brand fasteners or for connecting the band that avoids using clasps does not defeat the asserted obviousness of utilizing the self coiling features of Broderick. Broderick is seen to disclose a band that is similar to Freeman that has a concave shape allowing the band to be self coiling allowing the band to affixed to a wearer's appendage without the use of clasps (such as the Velcro disclosed by Freeman) as clearly asserted by the reference Broderick and explained in the rejection. Furthermore, the avoidance of using clasps as taught by Freeman is seen to be a valid reason for motivating one of ordinary skill the art to having self coiling band as taught by Broderick.

Regarding Claims 3 and 13, the applicant argues that the asserted motivation of retaining the shape of the band does not qualify as a reason for combining the teachings of Kuroda with Freeman et. al. The Examiner disagrees because obviating the use of fasteners or Velcro brand fasteners for that matter is seen to be a valid motivation in utilizing the sufficiently stiff display member of Kuroda.



***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT MAY whose telephone number is (571)272-5919. The examiner can normally be reached on Mondays through Fridays 9am-12pm & 1-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jong-Suk (James) Lee can be reached on (571) 272-7044. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert May  
Art Unit 2885  
11/18/08

/Jong-Suk (James) Lee/  
Supervisory Patent Examiner  
Art Unit 2885